# MARSHALL UPDATE/JUSTICE REFORM REVIEW

MAY 20, 1992

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May 20, 1992

I am pleased to present this report that updates the work that has been done to implement the recommendations of the Royal Commission on the Donald Marshall, Jr., Prosecution.

It also provides a summary of major justice system reforms.

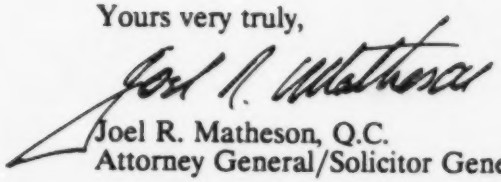
When the original response to the Marshall Royal Commission Report was given in February 1990, a commitment was made to improve our justice system to ensure that all Nova Scotians receive fair and equal treatment before the law.

I believe the changes that have been made are achieving that goal. Changes have been made and changes continue to be made because the system has recognized the importance of being responsive to the needs of the people it is designed to serve.

Every single component of Nova Scotia's Justice system has been positively affected by the implementation of these recommendations.

Thank you for your interest in the continuing improvements being made to Nova Scotia's system of justice.

Yours very truly,



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## SUMMARY

On January 26, 1990 the Report of the Royal Commission on the Donald Marshall, Jr., Prosecution was released. It contained 82 recommendations aimed at improving the administration of justice in Nova Scotia, especially in the area of the relationship between the justice system and members of visible minority communities.

The Government of Nova Scotia responded to the Report on February 7, 1990 laying out a "blueprint" for change. Progress reports were issued by the Attorney General's Department in August 1990 and January 1991.

This update differs in two ways from those. This report includes implementation updates from both the Nova Scotia Departments of Attorney General and Solicitor General. It also includes a number of justice system reforms not addressed directly by the Marshall Royal Commission Report.

**Section 1: Righting the Wrong**

All of the policies recommended in this section of the Marshall Commission Report have been implemented in Nova Scotia. Compensation to the Marshall family was handled under these policies.

A protocol for the further investigation or reinvestigation of cases clarifies the relationship between the police and the Crown.

**Section 2: Visible Minorities in the Criminal Justice System**

The Indigenous Black and Micmac (IBM) Program at Dalhousie University assists eligible visible minority students in earning a law degree. This will increase their presence and influence in shaping our justice system.

Both the Departments of Solicitor General and Attorney General have implemented employment equity programs for visible minority candidates for casual positions.

The ten-year Master Plan in the Solicitor General's Department includes provision for the educational, cultural and religious needs of Native and Black offenders. Directions have been given to Correctional Services personnel clearly indicating that discriminatory conduct against visible minorities will not be tolerated.

An adult diversion pilot project is being implemented at the Shubenacadie Reserve in Indian Brook. It will see eligible Natives, against whom criminal charges have been laid, answering to Micmac community standards for their behavior.

**Section 3: Nova Scotia Micmac and the Criminal Justice System**

The implementation of Native justice reforms centres around the Tripartite Forum. The Forum is comprised of representatives of the Native community, the Provincial Government and the Federal Government.

Tripartite Forum Subcommittees on justice, policing and human rights have been formed and are considering and acting upon the various recommendations under those respective topic areas.

**Section 4: Blacks in the Criminal Justice System**

Amendments to the *Human Rights Act* recommended by the Marshall Royal Commission have been implemented.

The Nova Scotia Legal Aid Commission has opened a new office in Dartmouth to provide better service to nearby Black communities. A satellite legal aid office has also been opened in the Preston area.

**Section 5: Administration of Criminal Justice**

Justice reforms noted in this section include Nova Scotia's new judicial appointment process; the implementation of the recommendations of the Court Structure Task Force; and the expansion of Victims' Services.

The *Public Prosecutions Act* establishes in law the independence of the Director of Public Prosecutions from the Attorney General.

This section also provides updates on the establishment of Regional Crown Attorneys; the clarification of the relationship between the Crown and the police; and the matter of police and Crown information disclosure.

**Section 6: Police and Policing**

This section explains the restructuring underway in the Solicitor General's Department, strengthening the role of the N. S. Police Commission in the area of investigations. It also deals with the new *Police Act* that expands the role of the Solicitor General's Department in areas such as police training and provincial police standards.

It also deals with minority recruitment and promotion and minority/police relations.

Also included is information on the new Nova Scotia Association of Boards of Police Commissioners; the Solicitor General's Advisory Committee on Policing; the Solicitor General's Task Force on Municipal Police Training; and the Law Enforcement Standards Project.

## SECTION 1: RIGHTING THE WRONG: DEALING WITH THE WRONGFULLY CONVICTED

This section deals with the implementation of the Marshall Royal Commission Recommendations 1 to 8.

**1. Review body**

*We recommend that the provincial Attorney General commence discussions with the federal Minister of Justice and the other provincial Attorneys General with a view to constituting an independent review mechanism - an individual or a body - to facilitate the re-investigation of alleged cases of wrongful conviction.*

**2. Powers of review body**

*We recommend that this review body have investigative power so it may have complete and full access to any and all documents and material required in any particular case, and that it have coercive power so witnesses can be compelled to provide information.*

**3. Judicial Inquiry to consider compensation claims**

*We recommend that when a person is found to have been wrongfully convicted, a judicial inquiry be constituted to consider any claim for compensation. The person or persons appointed to this inquiry should be completely independent of any involvement with the administration of justice in the province which gave rise to the wrongful conviction.*

**4. No limit on compensation amount**

*We recommend that there be no preset limit on the amounts recoverable with respect to any particular claim or any particular aspect of a claim.*

**5. Factors to be considered**

*We recommend that any judicial inquiry be entitled to consider any and all factors which may have given rise to the wrongful conviction, imprisonment or the continuation of that imprisonment.*

**6. Legal fees and disbursements**

*We recommend that appropriate legal fees and disbursements incurred by or on behalf of the wrongfully convicted person be paid as part of the inquiry's expenses.*

**7. Report to be public**

*We recommend that the inquiry report become a public document.*

## 8. Marshall compensation

*We recommend that Government re-canvass the adequacy of the compensation paid to Marshall in light of what we have found to be factors contributing to his wrongful conviction and continued incarceration.*

**Response:**

The Government accepted these recommendations.

**Action to Date:**

On the initiative of the Attorney General of Nova Scotia, these items were discussed at the Federal/Provincial/Territorial Attorneys General and Ministers of Justice Annual Meeting in June 1990. As a result, the Ministers established a national committee of senior officials to consider the Marshall Commission's recommendations and directed their Deputy Ministers to make recommendations to them based on the committee's report. Nova Scotia participated fully in this study.

At the last meeting of the Attorneys General of Canada, the Provinces and Territories in September 1991, the officials committee that conducted the study presented its report. The committee recommended that the guidelines on compensation for the wrongfully convicted contain no preset limit on the amounts recoverable (**Recommendation 4**); that it provide for the recovery of legal fees and disbursements by the wrongfully convicted person (**Recommendation 6**); and that a report of an inquiry be made public (**Recommendation 7**). The guidelines are sufficiently broad at present to allow a judicial inquiry. Some provinces would prefer to deal with matters administratively but Nova Scotia has committed to a judicial inquiry into compensation (**Recommendation 3**).

However, the committee felt that if the Federal Government provided additional resources, the current procedures in the Criminal Code are independent and would work well. Nova Scotia dissented and suggested, as a compromise, that the matter be referred to the Law Reform Commission of Canada or a number of provincial law reform commissions for further, detailed study. This too was rejected. (**Recommendations 1 and 2**)

**Nova Scotia Implementation:**

All of these policies have been implemented in Nova Scotia.

The Government of Nova Scotia established a commission of inquiry concerning the adequacy of the compensation paid to Donald Marshall, Jr. (**Recommendation 8**) The Commission was conducted in accordance with Recommendations 3 to 7.

This report was made public July 5, 1990. (**Recommendation 7**)

The compensation recommended by that report has been paid to Donald Marshall, Jr., the late Grand Chief, Donald Marshall, Sr., and Mrs. Marshall. The amounts included legal fees and disbursements. **(Recommendation 6)**

In May 1992 the Attorney General/Solicitor General released a Directive for Additional Investigation and Reinvestigation clarifying the role of the police and the Crown.

## SECTION 2: VISIBLE MINORITIES IN THE CRIMINAL JUSTICE SYSTEM

This section deals with the implementation of Marshall Royal Commission Recommendations 9 to 19.

### 9. Policy on Race Relations

*We recommend that the Departments of the Attorney General and Solicitor General adopt and publicize a Policy on Race Relations that has as its basis a commitment to employment equity and the elimination of inequalities, based on race, in these Departments and their agencies and the reduction of racial tensions between these Departments and the communities with which they interact.*

**Response:**

The Government accepted this recommendation.

**Action to Date:**

The Departments of Solicitor General and Attorney General have implemented affirmative action/employment equity policies for the filling of casual positions. The representation of Black employees within correctional institutions (Solicitor General's Department) exceeds that for the overall Nova Scotia population.

Casual employment positions were chosen as the initial phase of the program because these positions allow affirmative action candidates to gain work experience which will enhance their opportunities for permanent employment. Casual employment is solely within the control of the Department and need not await a broader government initiative toward affirmative action for permanent positions.

An educational program for management personnel responsible for casual hiring was implemented in order to assure successful implementation of the policy.

The committee has also identified the need for staff development and retention of minority employees, once hired. This requires a supporting working environment that can be best accomplished through education.

Lawyers in the Public Prosecution Service and the Legal Services Division of the Attorney General's Department have taken part in minority sensitization programs over the past two years. **(See response to Recommendation 14, p. 10)**

In the Solicitor General's Department, written policy prohibiting discriminatory conduct (including racial slurs) has been drafted for inclusion in Correctional Services policy and procedures manuals.

Provincial policing standards, developed by the Nova Scotia Law Enforcement Standards Project include prohibitions of unprofessional behavior with specific reference to racial slurs and stereotyping.

The Chiefs of Police Association of Nova Scotia adopted a resolution to develop an employment equity strategy; to implement measures to enhance the representation of minority groups within police departments throughout the Province and to eliminate barriers to recruitment and promotion.

The Solicitor General has established an Advisory Committee on Policing, which includes representation from visible minority groups, to provide advice on such issues as recruitment, hiring and promotion policy, training and standardization of policies and procedures; mechanisms for improving communications between the police and visible minorities and the eradication of racial slurs and stereotyping.

The Solicitor General has issued a request to each municipal Board of Police Commissioners to establish a Police Liaison Committee composed of members representative of the racial/ethnic mix of communities served by the respective police departments.

**10. Cabinet Committee on Race Relations**

*We recommend that a Cabinet Committee on Race Relations be established which would include the Attorney General and Solicitor General. This Committee would meet regularly with representatives of visible minority groups in order to assure the input of these groups in matters of criminal justice.*

**Response:**

A Cabinet Committee on Race Relations was formed in February 1990.

**Action to Date:**

Since that time, the role intended for this committee ("meet regularly with representatives of visible minority groups in order to assure the input of these groups in matters of criminal justice") has been taken over by a number of active consultative groups including:

- the Cabinet Committee on Multiculturalism, which has been expanded to include the Minister of Community Services and the Minister responsible for the Civil Service;
- the Race Relations Division of the Nova Scotia Human Rights Commission; and
- the Advisory Committee on Policing in the Solicitor General's Department.

**(See also Recommendations 57 and 58, p. 45)**

As well, legislative changes have been proposed to the *Police Act* which allow for an expansion of the Nova Scotia Police Commission and the Police Review Board. The Solicitor General intends to invite visible minority representatives to apply for these positions.

The Solicitor General has also requested that municipal police departments throughout Nova Scotia establish Police Liaison Committees that reflect the racial/ethnic mix of the communities they serve. **(See also Recommendation 59, p.46)**

## 11. Dalhousie Law School's minority admissions program

*We recommend that the Dalhousie Law School's minority admissions program for Micmacs and indigenous Blacks receive the financial support of the Governments of Canada and Nova Scotia, and the Nova Scotia Bar.*

**Response:**

The Government accepted this recommendation.

**Action to Date:**

On February 13, 1991, Attorney General Joel Matheson signed a three-year agreement with the Government of Canada; the Law Foundation of Nova Scotia; and Dalhousie University to support the Indigenous Black and Micmac Program at Dalhousie University Law School.

The agreement had a total value of $636,000. Over the three years, the Province committed to contribute $150,000; the Federal Government $150,000; and the Law Foundation $336,000.

The Department of Attorney General also provided financial support to the Dalhousie Black Law Students Association, assisting students to attend the first National Black Law Students Association Conference in Toronto in February 1992.

In addition to financial support, the Public Prosecution Service provides criminal law experience to an IBM student who has completed the first year of the program. The Attorney General's Department has also reserved an articled clerk position for a graduate of the program.

**12. Appointment of judges and board members**

*We recommend that Governments consider the needs of visible minorities by appointing qualified visible minority judges and administrative board members whenever possible.*

**Response:**

The Government accepted this recommendation.

**Action to Date:**

Lawyers in Nova Scotia wishing to become judges in the Provincial or Family Courts are invited to make application to the Judicial Appointments Review Committee.

(See Section 5: Administration of Criminal Justice for an update on Nova Scotia's judicial appointment procedure.)

With regard to boards and tribunals, the Government has made efforts to involve citizens through application invitations in newspaper advertisements.

In the case of visible minorities, a special effort to develop a roster of qualified people was undertaken and it enjoyed considerable success. Letters inviting candidates for consideration for appointments to such administrative boards were sent to leaders in the Native and Black communities throughout Nova Scotia.

**13. Programs for law students, lawyers, judges**

*We recommend that the Dalhousie Law School, the Nova Scotia Barristers' Society and the Judicial Councils support courses and programs dealing with legal issues facing visible minorities, and encourage sensitivity to minority concerns for law students, lawyers and judges.*

**Response:**

The Government endorsed this recommendation.

**Action to Date:**

The Government has supported such courses and programs and has encouraged Government lawyers, including Crown Attorneys to participate in them.

**14. Programs for Crown prosecutors**

*We recommend that the Attorney General establish continuing professional education programs for Crown prosecutors, which would include:*

*(a) an exposure to materials explaining the nature of systemic discrimination toward Black and Native peoples in Nova Scotia in the criminal justice system; and*

*(b) an exploration of means by which Crown prosecutors can carry out their functions so as to reduce the effects of systemic discrimination in the Nova Scotia criminal justice system.*

**Response:**

The Government accepted this recommendation.

**Action to Date:**

Mr. Marc Chisholm, Assistant Chief Crown Attorney (Trials), was made directly responsible for the development and provision of professional development programs in the Public Prosecution Service. Increased sensitivity to minority issues and reduction of systemic discrimination are priority objectives of the professional development program of the Public Prosecution Service.

In September, 1990 the Attorney General's Department Fall Conference spent one-half of its educational component devoted to a seminar entitled "The Marshall Legacy -- The Implications for the Legal Professions" conducted by Ms. Brenda Taylor. The seminar included a two-hour group discussion. The workshop was jointly sponsored by the Attorney General's Department and the Canadian Bar Association.

In September, 1991 the Attorney General's Department Fall Conference heard a presentation entitled "Aboriginal Peoples in Historical, Legal and Political Perspective" by Ms. Mary Ellen Turpel of the Dalhousie University Law School.

At the same gathering Ms. Heidi Marshall provided insights with respect to "Mikmaq and the Criminal Justice System". Following these presentations, small groups met to discuss how the Department and its legal staff should respond to the differences Mikmaq people bring to the criminal justice system. The program was jointly sponsored by the Attorney General's Department and the Canadian Bar Association.

These programs are part of the ongoing professional training Crown attorneys undergo on a wide variety of subject areas pertaining to criminal prosecutions.

**15. Police Training**

*We recommend that training for all police officers, both at the intake level and as continuing education, include content on police/minority concerns and sensitivity to visible minority issues.*

**Response:**

The Government accepted this recommendation.

**Action to Date:**

The Nova Scotia Police Commission, in consultation with representatives of the R.C.M.P., municipal police departments, Atlantic Police Academy and members of the Micmac, Black and other visible minority communities, has developed a three-day race relations course. A pilot session of the course has been evaluated by a group consisting of all senior management within the Department of Solicitor General. A timetable is being developed wherein municipal police officers, community correctional and institution staff will receive this race relations training.

**16. Public Legal Education programs and funding**

*We recommend that the Public Legal Education Society consult and work with Native and Black groups to develop and provide legal materials and services for minority users. These initiatives cannot be undertaken without specific funding. This should be provided where necessary by Government.*

**Response:**

The Government endorsed this recommendation.

**Action to Date:**

The Public Legal Education (PLE) Society of Nova Scotia is a non-profit community-based organization whose mandate is to make the law more understandable to Nova Scotians.

Several years ago the PLE Society identified Black and Native communities as specific target groups and it recognized the need for community outreach to those communities. The Society had already taken some initiatives prior to the Marshall Royal Commission Report.

The Society has met with an advisory group from the Black and Native communities to seek their input and advice. Members of those communities have accepted invitations to sit on the Society's Board of Directors.

Ongoing efforts to provide services to the Black and Native communities include:

- workshops (including a two-day national workshop on "Race Awareness");
- community meetings to discuss the legal information needs of these communities;
- publications developed in conjunction with Black and Native communities aimed at their legal information needs;
- meetings with representatives of these communities to plan future legal information sessions;
- the development of an internal race relations policy; and
- meetings with the Black and Native communities to discuss law as a career.

**17. Alternative Penalty Act**

*We recommend the Government immediately proclaim the Alternative Penalty Act, S.N.S. 1989, c.2, and that regulations which address the particular needs of Native and Black offenders be enacted.*

**Response:**

The Government accepted this recommendation.

**Action to Date:**

The *Alternative Penalty Act* was proclaimed February 1, 1990 and a Fine Option Program was implemented to enable an individual to satisfy a fine by performing community service work. Departmental staff have enlisted the support of Black and Micmac communities to ensure that appropriate work placements are available.

**18. Diversion Programs**

*We recommend that the Province, in close cooperation with the Native and Black communities, formulate proposals for the establishment of appropriate diversion programs for Natives and Blacks, and that the Province actively recommend such programs to the Federal Government with proposals for any necessary amendments to the Criminal Code.*

**Response:**

The Government endorsed this recommendation.

**Action to Date:**

In January 1992, the Tripartite Forum (Native Community, Provincial Government, Federal Government) approved a proposal for a pilot Adult Diversion Program on the Shubenacadie Reserve at Indian Brook. The proposal was initiated by Chief Reg Maloney.

The purpose of the Diversion Program is to direct eligible Native people, at the earliest time following the laying of a charge, from the existing court and criminal justice system to the Mi'kmaq community. The cases would then follow a procedure that would include a hearing before a Native Justice Panel.

The program will allow conduct that forms the basis of an offence to be dealt with by the Mi'kmaq community in a way consistent with Mi'kmaq concepts of criminal behaviour, keeping in mind general Canadian concepts of criminal behaviour. The decision to divert will be made by a Crown attorney shortly after receiving the case from the police.

A Diversion Officer from the reserve has been appointed to administer the program and training of the Justice Panel members has begun. Some procedures need to be finalized, but it is expected the program will be processing cases by summer, 1992.

**19. Correctional programs**

*We recommend that the Department of Solicitor General of Nova Scotia take steps to, and urge the federal correctional authorities to take steps to:*

*(a) immediately implement programs to recruit and hire more Natives and Blacks in professional and non-professional positions in the correctional service;*

*(b) implement ongoing education and training programs designed to sensitize correctional workers at all levels to the particular needs of Native and Black offenders based on their racial and cultural background;*

*(c) indicate to all correctional workers that discriminatory conduct (including racial slurs) against Natives and Blacks will not be tolerated and may result in adverse employment consequences;*

*(d) offer institutional programs emphasizing the educational, cultural and religious needs of Native and Black offenders in institutions where a significant number of Natives and Blacks are incarcerated; and*

*(e) support rehabilitation programs for Native and Black inmates and former inmates which take into account their background and needs.*

**Response:**

The Government accepted this recommendation.

**Action to Date:**

The Department of Solicitor General has initiated an Affirmative Action Program to hire more Natives and Blacks in the correctional service. As a result, the representation of Blacks in correctional institution positions is greater than their representation in the general provincial population. Currently 19 Blacks, 2 Natives and 2 disabled persons are employed with the Solicitor General's Department in various positions.

Management and trainers have developed and are implementing educational and training programs designed to sensitize correctional workers at all levels. A course schedule has been developed to ensure all staff receive training. In addition, orientation and basic training programs will include training sessions on Native and Black issues to ensure that all new staff are well aware of policies of the Solicitor General's Department on the subject but, more importantly, are sensitized at the earliest possible stage of employment.

Correctional staff have been informed that discriminatory conduct (including racial slurs) against Natives and Blacks will not be tolerated. Written policy has been drafted for inclusion in the Correctional Services policy and procedures manuals.

A ten-year Master Plan for correctional programs and facilities, currently being implemented, includes the development of programs to meet the educational, cultural and religious needs of Native and Black offenders. A plan for a proposed correctional facility has been completed with a program model reflecting the special needs of Blacks and Natives.

The Correctional Services Division of the Department continues to work with the Corrections Service of Canada regarding the development of special program services for Native and Black offenders and their families. The federal/provincial strategy has been endorsed by the Chairman of the National Parole Board and the Commissioner of Corrections. Terms of reference for a Black Advisory Committee are currently being developed. Once established, this Committee will be requested to consider the feasibility of establishing a Black liaison worker program for correctional institutions.

## SECTION 3: NOVA SCOTIA MICMAC AND THE CRIMINAL JUSTICE SYSTEM

This Section contains information on the implementation of Marshall Royal Commission Recommendations 20 to 30.

The following recommendations have been grouped together because they are under the jurisdiction of the Tripartite Forum **(Recommendation 22)**:

20. Native Criminal Court
21. Native Justice Institute
22. Tripartite Forum on Native Issues
24. Native Court Workers
25. Sittings of Provincial Court on Reserves
29. Native Justice Committee
30. Probation and Aftercare

The update on these recommendations begins on page 18.

### 20. Native Criminal Court

*We recommend that a community-controlled Native Criminal Court be established in Nova Scotia, initially as a five-year pilot project, incorporating the following elements:*

*(a) a Native Justice of the Peace appointed under Section 107 of the Indian Act with jurisdiction to hear cases involving summary conviction offences committed on a reserve;*

*(b) diversion and mediation services to encourage resolution of disputes without resort to the criminal courts;*

*(c) community work projects on the reserve to provide alternatives to fines and imprisonment;*

*(d) aftercare services on the reserve;*

*(e) community input in sentencing, where appropriate; and*

*(f) court worker services.*

**Response:**

The Government accepted the intent of this recommendation.

**21. Native Justice Institute**

*We recommend that a Native Justice Institute be established with Provincial and Federal Government funding to do, among other things, the following:*

*(a) channel and coordinate community needs and concerns into the Native Criminal Court;*

*(b) undertake research on Native customary law to determine the extent to which it should be incorporated into the criminal and civil law as it applies to Native people;*

*(c) train court workers and other personnel employed by the Native Criminal Court and the regular courts;*

*(d) consult with Government on Native justice issues;*

*(e) work with the Nova Scotia Barristers Society, the Public Legal Education Society and other groups concerned with the legal information needs of Native people; and*

*(f) monitor the existence of discriminatory treatment against Native people in the criminal justice system.*

**Response:**

The Government accepted the intent of this recommendation.

**22. Tripartite Forum on Native Issues**

*We recommend that a tripartite forum (Micmac/Provincial/Federal Government) similar to the Ontario Indian Commission be established to mediate and resolve outstanding issues between the Micmac and Government, including Native justice issues.*

**Response:**

The Government accepted this recommendation.

**24. Native Court Workers**

*We recommend that the Provincial and Federal Governments, in consultation with Native communities, work together to establish a Native court worker program, as an immediate first step in making the criminal justice system more accessible to Native people.*

**Response:**

The Government accepted the intent of this recommendation.

**25. Sittings of Provincial Courts on Reserves**

*We recommend that the Chief Judge of the Provincial Court take steps to establish regular sittings of the Provincial Courts on Nova Scotia reserves.*

**Response:**

The Government endorsed this recommendation.

**29. Native Justice Committee**

*We recommend that the advice of leaders chosen by the Native community and sitting as a Native Justice Committee be sought by judges in sentencing Natives, where possible.*

**Response:**

The Government accepted this recommendation.

**30. Probation and After Care**

*We recommend that the Provincial and Federal Governments facilitate and finance mechanisms by which Native people can have more control over the treatment of Natives convicted of an offence, such as establishing a probation officer capability and community-based aftercare services on-reserve.*

**Response:**

The Government endorsed the intent of this recommendation.

**Action to Date:**

From its initial response in February 1990 the Nova Scotia Government recognized the Tripartite Forum (**Recommendation 22**) as the cornerstone for addressing the issues raised by other recommendations dealing with Native justice issues.

The Provincial and Federal Governments agreed to provide financial support to the Forum and to Native political organizations contributing to it. In March of 1991 the Forum held its first meeting. Subcommittees on justice and policing established at that time have been active.

Work in progress includes:

(1) A needs assessment and project plan for a justice worker program (**Recommendation 24**) conducted by Dr. Don Clairmont of the Atlantic Institute of Criminology. This report is nearing completion. It is anticipated that a justice worker program could be administered by a Micmac controlled agency (**Recommendation 21**).

(2) Also included in Dr. Clairmont's study is an assessment of policing needs for the Confederacy of Mainland Micmac bands and the Native Council (off-reserve). The Union of Nova Scotia Indians had already done a study of its own. The Department of Solicitor General, the provincial agency responsible for policing, has accepted the concept of a Micmac regional police force. Legislative changes to this end were introduced by the Solicitor General in April 1992.

(3) The Tripartite Forum funded the hiring of a policing consultant in January 1992 to develop the terms of reference for a Mi'kmaq Board of Police Commissioners and an operational plan for a tribal police force for the five Cape Breton Bands.

(4) A proposal for an on-reserve adult diversion pilot project presided over by a committee of Micmac community leaders (**Recommendations 22 and 29**) has been approved by the Tripartite Forum for the Shubenacadie Band at Indian Brook (**see also Recommendation 18, p. 12**). It is hoped this pilot project will provide valuable lessons for other native communities.

A new Human Rights Subcommittee of the Tripartite Forum was formed in December 1991. It is examining human rights issues and efforts to reduce racial discrimination.

Generally, the Tripartite Forum is working well. Unfortunately, one of the three Native political organizations (The Confederacy of Mainland Micmacs) invited to participate has chosen to withdraw. However, relations between the Provincial Government and the Confederacy continue to be cordial and it is anticipated that they will contribute ideas and expertise to the implementation process.

The Tripartite Forum is one element in a dramatic turn of events in the last three years. Other developments include the request by the Government of Nova Scotia to the Electoral Boundaries Commission to consider a method of providing a Micmac seat to the provincial legislature and the full participation of Micmac in the Provincial Government's constitutional consultation process. As part of this, the three leaders of Nova Scotia political parties ensured Micmac representation on the Working Committee on the Constitution and formed an Advisory Committee on Aboriginal Constitutional Issues.

An enormous amount of work needs to be done and disagreements over issues of principle exist even now. However, the level of understanding between Government and the Native organizations has improved significantly in the last three years.

**23. Micmac interpreters**

*We recommend that all courts in Nova Scotia have the services of an on-call Micmac interpreter for use at the request of Micmac witnesses or accused.*

**Response:**

The Government accepted this recommendation.

**Action to Date:**

The Department of Attorney General hires Micmac interpreters when a Micmac defendant faces cultural or linguistic barriers. Currently, there is no formal assessment program. Reliance is placed on the defendant, the defendant's lawyer, or the Micmac community to identify the need to the Public Prosecution Service. There are fears that defence lawyers may not recognize linguistic and cultural communications barriers at an early enough stage. The extent of the problem is not clear as it has only recently been identified. It is hoped that Dr. Clairmont's study will provide a better idea of the extent of the problem and, if a problem exists, procedures whereby justice workers could screen Micmac defendants.

**26. Legal Aid Funding**

*We recommend that Nova Scotia Legal Aid be funded to permit them to:*

*(a) specifically assign lawyers to work with Native clients to develop a specialization with respect to the concerns of Native people; and*

*(b) hire a Native social worker/counsellor to, among other things, act as a liaison between Native people and the Legal Aid service.*

**Response:**

The Government endorsed this recommendation.

**Action to Date:**

The Nova Scotia Legal Aid Commission is funded by the provincial and federal governments. It operates independently of government under the *Legal Aid Act*.

The Provincial Government recently provided financial assistance to the Legal Aid Commission so it could open an office in Dartmouth to provide better services to nearby Black communities. A satellite Legal Aid office has also been opened in the Preston area on a one day per month basis.

The Provincial Government has also provided funding to the Legal Aid Commission to hire a social worker/counsellor.

**27. Liaison with Bar**

*We recommend that a program of ongoing liaison between the bar -- prosecutors, private defence and legal aid -- and Native people, both on and off reserve, be established through the Nova Scotia Barristers' Society. The Society must also educate its members concerning the special needs of Native clients.*

**Response:**

The Government endorsed this recommendation.

**Action to Date:**

The Nova Scotia Barristers' Society, through its Race Relations Committee, participated in an Outreach Program. The program was designed to give a better understanding of the work that lawyers do and to encourage students to consider a career in law.

With the assistance of the Public Legal Education Society of Nova Scotia and the Indigenous Black and Micmac Program at Dalhousie Law School, this program was taken to numerous Micmac and Black communities throughout the Province.

In November 1991 the Race Relations Committee organized a one-day consultation with members of the Black and Micmac communities. The recommendations that came from that session have provided the Committee with a basis for consideration of its future agenda.

**28. Native Constables**

*We recommend that the RCMP and municipal police forces, where applicable, take immediate steps to recruit and hire Native constables.*

**Response:**

The Government endorsed this recommendation.

**Action to Date:**

The RCMP has instituted the Aboriginal Constable Development Program in acknowledgement of the fact that many Natives face educational barriers to becoming RCMP officers. This program funds Native applicants so they may complete high school and regular police training. Because regular entrance standards are not relaxed, the recruits graduating from this program commence duty at the same level as all other graduates. In addition, the RCMP has removed the designation of Special Constable, in order to ensure the Native constables have the same status as their non-Native counterparts.

## SECTION 4: BLACKS IN THE CRIMINAL JUSTICE SYSTEM

This section contains information on the implementation of Marshall Royal Commission Recommendations 31 to 34.

### 31. Amendments to Human Rights Act

*We recommend that the Nova Scotia Human Rights Act be amended:*

*(a) to require that an annual report of the Commission's activities be submitted to the Minister who shall place the report before the Legislative Assembly;*

*(b) to specifically state that those parts of the justice system under provincial jurisdiction are included in the Act's coverage;*

*(c) to provide that where the Commission is unable to settle a complaint, and where the Commission recommends the appointment of a Board, it shall report to the Minister who shall appoint a Board of Inquiry (Section 32 now gives the Minister a discretion as to whether a Board shall be appointed); and*

*(d) to establish within the Commission a Race Relations Division reporting to the Commission through one or more members, at least one of whom shall be full time and designated as Race Relations Commissioner.*

**Response:**

The Government endorsed the intent of this recommendation.

**Action to Date:**

The amended Human Rights Act was proclaimed on October 18, 1991. The Annual Report for 1990-91 was released by order of the Minister in October, 1991.

Section 21 of the Human Rights Act states: "This Act binds Her Majesty in right of the Province and every servant and agent of Her Majesty". This includes those parts of the justice system under provincial jurisdiction.

Section 32 of the Human Rights Act gives the Commission the authority to appoint a Board of Inquiry. The Minister's consent is no longer required.

A Race Relations Division within the Human Rights Commission has been established. The first Coordinator of Race Relations assumed office on October 15, 1991.

**32. Funding for Human Rights Commission**

*We recommend that the Human Rights Commission be provided with sufficient resources to enable it to effectively carry out its present mandate and further responsibilities added by our recommendations, and in particular to enable it:*

*(a) to retain independent legal counsel; and*

*(b) to engage in an active public awareness program, particularly in the area of Native and Black concerns.*

**Response:**

The Government accepted the intent of this recommendation.

**Action to Date:**

Legal counsel is currently provided to the Human rights Commission through the Attorney General's Department. A review is currently underway respecting the appointment of a full time legal counsel due to the growing workload.

The Human Rights Commission continues to deliver a public awareness program. This program continues to be presented in cooperation with other institutions and organizations.

**33. Responsibility of Chief Judges**

*We recommend that the Chief Justices and Chief Judges of each court in Nova Scotia exercise leadership within his or her area of responsibility to ensure fair treatment of visible minorities in the criminal justice system.*

**Response:**

The Government endorsed this recommendation.

**Action to Date:**

The Chief Justices and Chief Judges have met with representatives of visible minority groups; attended seminars; and made plans for further contacts with visible minority communities in order to ensure greater understanding and awareness.

**34. Legal Aid Funding for Black Clients**

*We recommend that, because of the dependence of Black clients on legal aid services, the funding of legal aid in Nova Scotia be re-examined to ensure that there are sufficient counsel to properly serve minority clients and to engage in proactive programs in minority communities.*

**Response:**

The Government accepted this recommendation.

**Action to Date:**

The Nova Scotia Legal Aid Commission recently opened a new office in Dartmouth to provide better service to Black clients living in nearby communities. This was done with financial assistance from the Provincial Government. The possibility of a satellite office in the Preston area was explored with members of those communities. As a result, an office is open there on a one day per month basis.

The Government has also provided funding to the Legal Aid Commission to hire a social worker/counsellor.

## SECTION 5: ADMINISTRATION OF CRIMINAL JUSTICE

This section contains information on the implementation of Marshall Royal Commission Recommendations 35 to 45.

It also contains information on:

- Nova Scotia's new judicial appointment process;
- the implementation of the recommendations of the Court Structure Task Force;
- the expansion of victims' services across the Province;
- changes to the criminal injuries compensation process; and
- the new Crown Attorney selection process.

### Judicial Appointment Process

In July 1989, then Attorney General Tom McInnis announced Cabinet had adopted new guidelines for the appointment of judges to the Provincial and Family Courts. He announced that a Nova Scotia Judicial Appointments Advisory Committee would be established to determine whether candidates who had applied to be judges were suitable for appointment by considering their character, health, work habits, experience in law, intellectual ability and judgemental ability.

The committee would be composed of 6 people, including the Chief Judges of the Provincial and Family Courts, two members of the Nova Scotia Barristers' Society and one person each (not graduates of law) appointed by the Attorney General and the Minister of Community Services.

### Judicial Appointment Process Upgraded

In May 1991, current Attorney General Joel Matheson introduced more stringent guidelines for provincial judicial appointments.

Changes in the Judicial Appointment Advisory Committee's guidelines include:

(a) Minimum qualifications: increased to 10 years before the Bar, from 5.

(b) Expanded criteria under the headings of personal characteristics to include intellectual and judgmental ability; professional excellence; community awareness and understanding; and demographic. (Cabinet recognized the under-representation of women and visible minorities on the bench and the new guidelines noted, *"The Committee will recommend the appointment of a well*

*qualified person from an under-represented group if no one else is clearly better qualified.")*

(c) All vacancies must be advertised provincially and, at the Committee's discretion, nationally.

(d) The Committee will provide Cabinet with a short list of no fewer than 3 and no more than 6 candidates, ranked in order of the Committee's preference. The prior arrangement had the Committee providing Cabinet with an alphabetical list of candidates deemed by the Committee to be suitable for appointment, without any rankings.

As well, the Judicial Appointments Advisory Committee was expanded to 8 people from 6. The additional members are to be appointed (1 each) by the Attorney General and the Minister of Community Services. These appointees are not to be graduates in law.

**Court Structure Task Force**

The Nova Scotia Court Structure Task Force was appointed by then Attorney General Tom McInnis in January, 1990 to examine the structure and procedures of the courts in the Province. The Task Force was asked to examine the jurisdiction, structure, organization, sittings, case scheduling and workload of the courts and to provide recommendations to Government how the court system could be streamlined and made more efficient and responsive.

The Task Force held public meetings and sought written submissions from judges, lawyers and community groups. It also met with representatives and received submissions from jurisdictions across Canada including Ontario, Manitoba, British Columbia and New Brunswick.

After over a year of consultation and study, the Task Force submitted its report to Attorney General Joel Matheson in mid-March 1991. The Task Force report contained 113 recommendations with regard to court structure, systems and procedures.

Mr. Matheson provided the response of the Government of Nova Scotia on April 9, 1991. In that response, Mr. Matheson noted the Government's commitment to court reform and to the spirit of the recommendations made by the Task Force.

Mr. Matheson announced that implementation of the recommendations would be approached in phases. Phase One (1991-1993) would include legislation to merge the Supreme and County Courts; the establishment of the Nova Scotia Court of Appeal; and the creation of four (4) judicial districts within the Province.

Phase Two (1993-1996) requires Federal Government cooperation in order to create a Family Division of the Supreme Court of Nova Scotia, replacing the current Family Court system, which is administered by the Department of Community Services.

Mr. Matheson also committed to increased services for victims of crime through the Victims' Services Division of the Department of Attorney General (see below).

The Attorney General also supported recommendations dealing with such topics as the implementation of a government-wide plain language initiative and the study of a unified criminal court.

**Court Reform Legislation**

In April 1992, Attorney General Joel Matheson introduced amendments to several Acts in order to (among other objectives):

- merge the Nova Scotia Supreme Court (Trial Division) with the County Court, to be called the Nova Scotia Supreme Court;
- rename the Nova Scotia Supreme Court (Appeal Division) as the Nova Scotia Court of Appeal;
- overhaul the complaint and discipline procedures for Provincial Court and Family Court judges;
- establish 4 judicial districts within Nova Scotia;
- increase the jurisdiction of the Small Claims Court to $5,000 from $3,000;
- streamline the Small Claims Court appeal process; and
- upgrade the office of Justice of the Peace.

This legislation is currently before the House of Assembly.

**Victims' Services Expansion and Criminal Injuries Compensation Board Reform**

In November 1991 the Attorney General announced the expansion of services to victims of crime across Nova Scotia.

Currently, the Criminal Injuries Compensation Board and the Victims' Services Division are two separate components of the Attorney General's Department. In that announcement, the Attorney General indicated his intention to amalgamate all criminal justice services to victims of crime under the Victims' Services Division.

The Services to be provided by the Victims' Services Division will include:

- criminal injuries compensation;
- regional victims' services; and
- a community-based funding program.

In April 1992 the Attorney General introduced legislation in the House of Assembly that will see criminal injuries compensation offered administratively rather than judicially. This will speed up the compensation process considerably. The current Criminal Injuries Compensation Board will be replaced by a Manager of Criminal Injuries Compensation. Victims of crime who have suffered personal injury will continue to be compensated for direct costs, however financial awards for pain and suffering will be replaced with awards to pay for counselling services within the community. This change will **not** be enforced until the new legislation is proclaimed.

The Victims' Services Division will be expanded to include 5 regional offices offering criminal justice-based services to victims of crime. These offices will be staffed by Victims' Services officers who will provide direct services to victims of crime. These services will include liaison with police, Crown attorneys and corrections personnel; court orientation, information and referral; and assistance with victim impact statements and criminal injuries compensation forms.

These offices will be located in Halifax, Sydney, New Glasgow, Kentville and Yarmouth. The Halifax office is expected to open this summer. The other offices should be open and by the end of the calendar year.

The community-based program, which has supported 10 projects to date, will continue to provide project funding to community-based groups at the rate of $400,000 per year. The purpose of this program is to enable community-based groups to develop programs and services for victims of crime.

Priority will continue to be given to community-based voluntary, non-profit, non-government organizations and groups. Through 1995 priority will be given to projects addressing the needs of victims of child abuse, sexual assault and family violence.

**Crown Attorney Selection Process**

The *Public Prosecutions Act* requires that all full-time Crown attorneys be barristers appointed pursuant to the *Civil Service Act* upon the recommendation of the Director of Public Prosecutions after a competition.

Vacancies within the Public Prosecution Service are publicly advertised. Any member of the Nova Scotia Barristers' Society is qualified to make an application for an advertised vacancy. The competition process ensures that the best qualified candidates are appointed as Crown attorneys.

The Public Prosecution Service has changed the way in which lawyers who conduct part-time prosecutions are appointed.

The Service advertised and invited applications from lawyers with experience in criminal law. The applications were assessed by the Regional Crown Attorneys, who submitted recommendations to the Director of Public Prosecutions. From those recommendations, appointments were made by the Director pursuant to Section 14(1) of the *Public Prosecutions Act*.

**35. Director of Public Prosecutions**

*We recommend that:*

*(a) there be created by statute the office of Director of Public Prosecutions, and that the holder of this office:*

*(i) be a member of the bar of Nova Scotia (or equivalent) for a minimum of ten years;*

*(ii) be appointed by the Governor in Council after consultation with the officers of the Nova Scotia Barristers Society and with the two Chief Justices of the Superior Courts in Nova Scotia, for a term of ten years, with eligibility for reappointment;*

*(iii) be removable for cause by the Governor in Council only after a resolution from the provincial Legislature approving such action;*

*(iv) be paid and given employment benefits not less than those of a judge of the County Court of Nova Scotia, and have the status of a departmental "deputy head";*

*(b) the duties and responsibilities of the Director of Public Prosecutions include:*

*(i) the exercise of all of the functions of the Attorney General as agent and deputy of the Attorney General in relation to the administration of criminal justice in the province, subject to paragraph (c) below; and in particular;*

*(ii) regular consultation with the Attorney General concerning all aspects of public prosecution and the administration of the prosecution service;*

*(iii) the direction of the prosecution service of the province, including supervision of those functions presently exercised by the Director (Prosecutions) and the Director (Criminal);*

*(iv) the presentation of an annual report to the Attorney General on the conduct of public prosecutions in the province, which shall describe, among other matters, any personal interventions by the Attorney General pursuant to paragraph (c)(i);*

*(c) the Attorney General continue to exercise the duties and responsibilities traditionally accorded to that office in relation to the administration of criminal justice, subject only to the limitations which follow:*

*(i) where he or she deems it necessary, the Attorney General may intervene in a prosecution contrary to the advice of the Director of Public Prosecutions but*

*only through the use of written instructions which shall be published within 30 days of their issuance in the* Royal Gazette, *or following expiry of the appeal period, whichever is later;*

*(ii) the Attorney General shall, after consultation with the Director of Public Prosecutions, issue guidelines for the exercise of prosecutorial discretion which shall be tabled in the provincial legislature as soon as is practicable after their issuance; and*

*(iii) the Attorney General shall table in the provincial legislature as soon as is practicable the annual report received from the Director of Public Prosecutions pursuant to paragraph (b)(iv).*

**Response:**

The Government accepted the intent of this recommendation.

**Action to Date:**

Legislation to establish the office of Director of Public Prosecutions and to safeguard its independence was passed during the 1990 session of the Legislature. The legislation took effect September 1, 1990.

The Director of Public Prosecutions (DPP) is, by law, responsible for all prosecutions and appeals conducted on behalf of the Crown. The DPP may consult with the Attorney General when he deems it appropriate. However, any direction the Attorney General gives the DPP with respect to any prosecution must be in writing and must be published in the Royal Gazette. In this way the DPP remains independent of the Attorney General throughout the decision-making process and the Attorney General maintains ministerial accountability to the public.

The first Annual report of the Public Prosecution Service will be presented to the Legislature in May 1992.

**36. Policy statement on the role of police**

*We recommend that the following policy statement be included in the Crown Prosecutors' Manual:*

*(a) in the investigation of offences prior to the laying of charges, it is understood that the police officers are to carry out their duties in accordance with the law and general standards, practices and policies established by the Solicitor General, but in consultation with the appropriate Crown prosecutor where necessary; and*

*(b) after the laying of charges, police shall carry out any investigations in accordance with the instructions of the Attorney General or appropriate prosecutor with a view to preparation of the case for presentation in court.*

**Response:**

The Government accepted this recommendation.

**Action to Date:**

The *Public Prosecutions Act* (Section 4(d)) provides as a matter of law that the Director of Public Prosecutions shall advise police officers in respect of prosecutions generally, or in respect of a particular investigation when the police request such assistance. The Director performs this function personally or through the Crown Attorneys of the Public Prosecution Service.

The second aspect of the recommendation relates to post charge investigations. The Directive for Additional Investigation and Reinvestigation released today by the Attorney General/Solicitor General provides:

> "Where a charge has been laid, or the case is otherwise subject to judicial process (e.g. a fatality inquiry), and has not been finally dealt with according to law, the police shall carry out any additional investigation requested by the Director of Public Prosecutions or the appropriate Crown Attorney."

**37. Laying of charges**

*We recommend that:*

*(a) police officers be informed in general instructions from the Solicitor General that they have the ultimate right and duty to determine the form and content of charges to be laid in any particular case according to their best judgment, subject to the Crown's right to withdraw or stay the charges after they have been laid;*

*(b) within each police force there be a clear written policy on resolving disagreements between the police and Crown over the laying of charges, and that such policy provides that no charge shall be laid contrary to the advice of the Crown unless and until discussions have been held between the highest levels of police and Crown;*

*(c) within each police force and within the Department of Attorney General there be a clear written directive requiring absolute confidentiality and secrecy of the identity of persons being investigated other than on a need to know basis within the police force and the Department;*

*(d) prosecutors be informed in general instructions from the Attorney General that police officers have the right and the duty to determine the form and content of charges to be laid in any particular case, subject to the Crown's right to withdraw or stay the charges after they have been laid;*

*(e) police officers and Crown prosecutors be informed by their respective departmental superiors that police are encouraged to consult with the appropriate prosecutor concerning the drafting of informations, where such consultation might be thought useful; and*

*(f) the Attorney General institute a system of post-charge screening in appropriate locations in the province (initially as a pilot project) to ensure that no charges which are not strictly necessary in accordance with the evidence and the public interest shall go forward.*

**Response:**

The Government accepted this recommendation.

**Action to Date:**

In February 1990 the Solicitor General issued a directive regarding the laying of charges. This directive underscored the right and duty of police to determine the form and content of charges to be laid in any particular case, subject to the Crown's right to withdraw or stay the charges after they have been laid.

**Post-charge Screening Project**

Between June and December 1991, a post-charge screening project recommended by the Marshall Royal Commission was conducted by the Public Prosecution Service in Annapolis, Kings and Hants County and at the Spring Garden Road and Bedford Courts in Halifax County. The information generated by the pilot project is now being analysed and will provide insights into the following issues:

1) the frequency with which it is necessary to exercise prosecutorial discretion to stop prosecutions

2) the benefits of the early detection of deficiencies in the Crown files and an early determination of the Crown's position on sentence; and

3) the quality of the Crown sheets prepared by the police.

**38. <u>Factors to be considered when stopping prosecutions</u>**

*We recommend that:*

*(a) the Attorney General promulgate a clearly stated policy concerning the public interest factors which should, and should not, be considered in deciding whether to undertake or stop a prosecution even in the face of evidence which could sustain a conviction;*

*(b) the factors which might arise for consideration in determining whether the public interest requires a prosecution, include:*

*(i) the triviality of the alleged offence or that it is of a "technical" nature only;*

*(ii) the age, physical health, mental health or special infirmity of an alleged offender or witness;*

*(iii) the staleness of the alleged offence;*

*(iv) the degree of culpability of the alleged offender (particularly in relation to other alleged parties to the offence);*

*(v) the likely effect of a prosecution on public order and morale;*

*(vi) the obsolescence or obscurity of the law;*

*(vii) whether the prosecution would be perceived as counterproductive (such as by making a "martyr" of an alleged offender or by providing publicity to an alleged hate propagandist);*

*(viii) the availability of efficacy of any alternatives to prosecution in the light of the purposes of the criminal sanction;*

*(ix) the prevalence of the alleged offence and any related need for deterrence;*

*(x) whether the consequences of any resulting conviction would be unduly harsh or oppressive;*

*(xi) any entitlement of the State or other person to compensation, reparation or forfeiture if prosecution action is successful;*

*(xii) the attitude of the victim of the alleged offence to a prosecution;*

*(xiii) the likely length and expense of a trial;*

*(xiv) whether the alleged offender is willing to cooperate in the investigation or prosecution of others, or the extent to which he or she has already done so;*

*(xv) the likely outcome in the event of a finding of guilt, having regard to the sentencing options available to the court;*

*(xvi) the necessity for the maintenance of public confidence in legislatures, courts and the administration of justice;*

*(c) the factors which are to be excluded from consideration in determining whether the public interest requires a prosecution, include:*

*(i) the alleged offender's race, religion, sex, national origin, political associations, or beliefs;*

*(ii) the prosecutor's personal feelings concerning the victim or the alleged offender;*

*(iii) any partisan political advantage or disadvantage which might flow from the decision to undertake or stop a prosecution; or*

*(iv) the possible effect on the personal or professional circumstances of those responsible for the prosecution decision;*

*(d) where the prosecutor decides not to undertake or to stop a prosecution by reason of a public interest factor such as those mentioned in (b), a notation of this decision be placed in the file relating to the case in question;*

*(e) the Solicitor General bring the foregoing public interest factors relevant to the prosecution of offences to the attention of police forces operating within the province.*

**Response:**

The Government accepted this recommendation.

**Action to Date:**

In June, 1991 the Director of Public Prosecutions issued standards for the exercise of prosecutorial discretion as part of a post-charge screening project (**see also response to Recommendation 37, p. 32**).

These standards emphasize that in exercising their discretion to stop a prosecution, Crown attorneys are to be guided by the principle that a prosecution should only go forward where there is evidence available on each essential element of the offence and the Crown attorney believes there is a reasonable chance that a conviction will result if the case proceeds to trial.

The standards also outline the factors identified by the Marshall Royal Commission as being appropriate considerations for the exercise of prosecutorial discretion.

**39. Disclosure by Crown**

*We recommend that the Department of Attorney General of Nova Scotia urge the Federal Government to implement amendments to the* Criminal Code *of Canada as follows:*

*1. A justice shall not proceed with a criminal prosecution unless he is satisfied:*

*(a) that the accused has been given a copy of the information or indictment reciting the charge or charges against him in that prosecution; and*

*(b) that the accused has been advised of his rights to disclosure.*

*2(1) Without request, the accused is entitled, before being called upon to elect the mode of trial or to plead to the charge of an indictable offence, whichever comes first, and thereafter:*

*(a) to receive a copy of his criminal record;*

*(b) to receive a copy of any statement made by him to a person in authority and recorded in writing or to inspect such a statement if it has been recorded by electronic means; and to be informed of the nature and content of any verbal statement alleged to have been made by the accused to a person in authority and to be supplied with any memoranda in existence pertaining thereto;*

*(c) to inspect anything that the prosecutor proposes to introduce as an exhibit and, where practicable, receive copies thereof;*

*(d) to receive a copy of any statement made by a person whom the prosecutor proposes to call as a witness or anyone who may be called as a witness, and recorded in writing or, in the absence of a statement, a written summary of the anticipated testimony of the proposed witness, or anyone who may be called as a witness;*

*(e) to receive any other material or information known to the Crown and which tends to mitigate or negate the defendant's guilt as to the offence charged, or which would tend to reduce his punishment therefore, notwithstanding that the Crown does not intend to introduce such material or information as evidence;*

*(f) to inspect the electronic recording of any statement made by a person whom the prosecutor proposes to call as a witness;*

*(g) to receive a copy of the criminal record of any proposed witness; and*

*(h) to receive, where not protected from disclosure by the law, the name and address of any other person who may have information useful to the accused, or other details enabling that person to be identified.*

*2(2) The disclosure contemplated in subsection (1), paragraphs (d), (e) and (h) shall be provided by the Crown and may be limited only where, upon an* inter partes *application by the prosecutor, supported by evidence showing a likelihood that such disclosure will endanger the life or safety of such person or interfere with the administration of justice, a justice having jurisdiction in the matter deems it just and proper.*

*2(3) Subsection (1) imposes a continuing obligation on the prosecutor to disclose the items as above provided.*

*2(4) A statement referred to in sub-paragraph (b), (d) or (f) of subsection (1) does not include a communication that is governed by the "Invasion of Privacy" provisions of the* Criminal Code.

*3. Where a justice having jurisdiction in the matter is satisfied that there has not been compliance with the provisions of subsections 2(1) and 2(2) above, he shall, at the accused's request, adjourn the proceedings until, in his opinion, there has been compliance, and he may make such other order as he considers appropriate in the circumstances.*

**Response:**

The Government accepted the intent of this recommendation.

**Action to Date:**

In February, 1990 the Director of Public Prosecutions issued an updated disclosure directive to the Public Prosecution Service. The following matters were added to the policy statement:

- disclosure will include the names and addresses of potential witnesses balancing the principle of full and fair disclosure with the need to prevent endangering the life or safety of witnesses or interference with the administration of justice;

- the continuing obligation upon the Crown to make the accused aware of the existence of evidence which the Crown believes is otherwise relevant to the guilt or innocence of the accused, but not evidence which will be called in rebuttal.

Crown attorneys are to provide a copy of the guidelines to defence counsel or an accused person on request.

**40. Application to limit disclosure**

*We recommend that no application to limit disclosure be made without the prior written approval of the Director of Public Prosecutions or a Deputy Attorney General.*

**Response:**

The Government accepted this recommendation.

**Action to Date:**

The Director of Public Prosecutions or a Regional Crown Attorney must approve any withholding of information by the Crown.

**41. Interim policy on disclosure**

*We recommend that until the proposed statutory amendments to the* Criminal Code *are effected, the Attorney General adopt and implement as a matter of policy the duties of disclosure reflected in the preceding recommendation.*

**Response:**

The Government accepted this recommendation.

**Action to Date:**

The Attorney General has required Crown prosecutors to disclose information to the defence since 1980.

The disclosure policy statement was updated February 7, 1990 in response to the Marshall Commission Report. The following matters were added to the policy statement:

- Disclosure will include the names and addresses of potential witnesses balancing the principle of full and fair disclosure with the need to prevent endangering the life or safety of witnesses or interference with the administration of justice.

- The continuing obligation upon the Crown to make the accused aware of the existence of evidence which the Crown believes is otherwise relevant to the guilt or innocence of the accused, but not to evidence which will be called in rebuttal.

Crown Attorneys provide a copy of the guidelines to defence counsel or an accused person on request.

A committee of senior justice officials from across the country (including Nova Scotia) reported to the September 1991 Justice Ministers' Meeting. It was decided that no amendments should be made to the Criminal Code at this time. However, a federal/provincial working group is examining Criminal Code procedures with a view to recommending improvements.

In November 1991, the Supreme Court of Canada released a decision (Stinchcombe v. R) which held that the Crown has a legal duty to disclose all relevant information to the defence. The obligation to disclose is subject to a discretion with respect to the withholding of information and to the timing and manner of disclosure. Crown counsel has a duty to respect the rules of privilege and to protect the identity of informers. A discretion must also be exercised with respect to the relevance of information.

Following the release of the Stinchcombe decision, the Public Prosecution Service reviewed the February 7, 1990 disclosure directive and concluded that the directive was not in need of immediate revision. During the next year, the Public Prosecution Service will be engaging in discussions with the Department of Solicitor General, the police community, the defence bar and other interested parties to further examine the process by which the disclosure obligation is met.

**42. Police Duty to Disclose**

*We recommend that:*

*(a) the Solicitor General inform police forces operating within the province of the Attorney General's directive on disclosure and require compliance with its principles in relations between police and prosecutors;*

*(b) the Solicitor General ensure that continuing police training includes information on the necessity of compliance with disclosure policy.*

**Response:**

The Government accepted this recommendation.

**Action to Date:**

The Department of Solicitor General issued a memorandum to all police forces in April 1992 advising of recent caselaw regarding police duty to disclose. The Public Prosecution Service is preparing a directive which will be issued jointly to police and Crown attorneys.

**43. Plea discussions and agreements**

*We recommend that the existing policy directive on plea discussions and plea agreements be revised to clearly set out the basis for the exercise of discretion by Crown prosecutors in this area, and that such directive in particular set out the governing principles of openness, voluntariness, accuracy, appropriateness and equality.*

**Response:**

The Government accepted these recommendations.

**Action to Date:**

The Public Prosecution Service is engaged in a comprehensive review of the policy manual for Crown attorneys. A number of Crown attorneys' offices are testing the suitability for Nova Scotia of policies developed in other jurisdictions. The Public Prosecution Service intends to engage in broad consultation before adopting policies concerning plea negotiations (plea bargaining). This is an area that requires public input.

**44. Summaries to trial judges**

*We recommend the abolition of summaries to trial judges and the abolition of the practice of providing trial judges with copies of preliminary inquiry transcripts.*

**Response:**

The Government accepted this recommendation.

**Action to Date:**

Federal legislation is needed to amend Section 551 of the Criminal Code to abolish the requirement to provide trial judges with copies of preliminary inquiry transcripts. The Attorney General of Nova Scotia has written to his fellow provincial Ministers requesting their support in his efforts to petition the federal Minister of Justice to make this change.

The Chief Justice of the Trial Division of the Nova Scotia Supreme Court was consulted and she stated that the trial judges find the summary outlining the nature of the Crown's case helpful and would like the practice to continue, provided that defence counsel receives such summaries in advance in order to properly represent their position.

Crown attorneys were instructed in July 1988 to ensure that defence counsel were provided with summaries in sufficient time to allow them to make any appropriate submissions.

**45. Regional prosecuting officers**

*We recommend that a system of chief prosecuting officers for each region be adopted in order to create an effective middle level of management in Nova Scotia's prosecution service.*

**Response:**

The Government accepted this recommendation.

**Action to Date:**

The Public Prosecution Service was divided into 4 regions (Central Region, Western Region, Cape Breton Region and Halifax Region) and Regional Crown Attorneys were appointed in each region by November 1990. Together with senior staff at head office they form the Public Prosecution Service Regional Management Council. The Council meets on a monthly basis to discuss and review prosecution service practices and policies.

Regional Crown Attorneys have also been given increased responsibility with respect to professional evaluation and the process for recommending per diem (part time) Crown Attorney appointments to the Director of Public Prosecutions.

## SECTION 6: POLICE AND POLICING

This section deals with the implementation of Marshall Royal Commission Recommendations 46 to 82.

The following recommendations have been grouped together because they relate to the respective roles of the Nova Scotia Police Commission and the Nova Scotia Department of Solicitor General.

The update to these recommendations is on page 41.

46. Police Commission Resources and Staffing
47. Assessments of Municipal Police Departments
48. RCMP Input to Police Commission
50. Independence of Police Commission
51. Executive Director (Policing)
53. Independence of Police Review Board

### 46. Police Commission Resources and Staffing

*We recommend that the Police Commission be provided with sufficient resources to enable it to fulfil properly the leadership, training, information and assessment roles that constitute its mandate. Such resources should include funding for:*

*(a) restoring the position of Chairman of the Police Commission to a full time position;*

*(b) the appointment of four part time Commissioners who are broadly representative of community and public interest in policing;*

*(c) the appointment of an experienced Executive Director whose responsibilities will include Research, Information and Statistics; Training, Personnel and Development; Advisory Services; and Security.*

**Response:**

The Government accepted the intent of this recommendation.

### 47. Assessment of Municipal Police Departments

*We recommend that the Police Commission conduct regular assessments of the operations of each municipal police department in accordance with the provisions of the* Police Act.

**Response:**

The Government accepted this recommendation.

**48. RCMP input to Police Commission**

*We recommend that the Solicitor General require the RCMP to provide information concerning RCMP operations in the province to the Police Commission on an ongoing basis so the Commission can develop and plan rational policing policy and an adequate police information system in the province.*

**Response:**

The Government accepted the intent of this recommendation.

**50. Independence of Police Commission**

*We recommend that the Police Commission not be absorbed into the mainline structure of the Solicitor General's Department to keep it relatively independent of political considerations and to better reflect the municipal-provincial partnership and characterizes the Nova Scotia organization of policing services.*

**Response:**

The Government accepted this recommendation.

**51. Executive Director (Policing)**

*We recommend the establishment within the Solicitor General's Department of an Executive Director (Policing) to reflect its increasing role in policing in the province.*

**Response:**

The Government accepted this recommendation.

**53. Independence of Police Review Board**

*We recommend that the Chairman of the Nova Scotia Police Commission not act as the Registrar of the Police Review Board, and that the Nova Scotia Police Commission not provide investigative services to the Police Review Board.*

**Response:**

The Government accepted the intent of this recommendation.

**Action to Date:**

A review of the structure of the Nova Scotia Police Commission was undertaken to determine the most cost-effective mechanism for the delivery of policing services **(Recommendation 46)**. As a result of this internal review and consultation with other provinces, a decision was made to restructure the delivery of policing services to redefine the functions of the Nova Scotia Police Commission and the Department

of Solicitor General. The new structure, which is consistent with that adopted by the majority of Canadian jurisdictions, consolidates most functions currently performed by the Nova Scotia Police Commission, Provincial Firearms Office and the Countermeasures Program (previously attached to the Department of Attorney General), through the creation of a Policing Services Division within the Department of Solicitor General.

An Acting Executive Director (Policing Services Division) was appointed effective April 1, 1992 (**Recommendation 51**). The establishment of the Division as a focal point for all policing matters will facilitate the implementation of provincial law enforcement policy and promote the delivery of uniform services by the RCMP (**Recommendation 48**), and municipal police departments. The creation of the position of Manager, Audit and Support Services (April 1992), will ensure that regular assessments of the operation of police departments are conducted to ensure compliance with minimum policing standards (**Recommendation 47**).

The Nova Scotia Police Commission continues to be responsible for the investigation of public complaints against the police, and for the conduct of major inquiries under the *Police Act*. The role of the Police Review Board remains unchanged, as a quasi-judicial body hearing matters involving public complaints and internal discipline of police officers.

The restructuring is a response to the need for the Solicitor General's Department to provide consistent policy direction and leadership to police forces in the province. At the same time, government must satisfy the right of the public to an independent, impartial process for examining complaints against the police and investigating alleged police wrongdoings (**Recommendation 50**). These two essential and distinct roles were compromised by combining the investigative and advisory functions within the Nova Scotia Police Commission. To resolve this conflict, the resources and scope of the Commission are being focused in the area of public complaints investigation. By removing the advisory and inspection roles from the Police Commission and the creation of an independent investigator's position in the Commission (April 1992), the need to assign separate administrative and investigative staff to the Police Review Board no longer exists (**Recommendation 53**).

In April 1992, Solicitor General Joel Matheson introduced amendments to the *Police Act*, the *Police Services Act* and the *Private Investigators and Private Guards Act* which reflect these changes.

**49. Funding for Policing**

*We recommend that the Police Commission develop and maintain close liaison with officials in the Department on Municipal Affairs and the Executive of the Union of Nova Scotia Municipalities with a view to developing a more rational basis for provincial financial assistance for municipal policing services.*

**Response:**

The Government accepted this recommendation.

**Action to Date:**

The Task Force on Local Government recently proposed that policing services (excluding Highway Patrol), should be delivered and financed by local governments. The implications of this recommendation will be reviewed by an interdepartmental committee in consultation with the Union of Nova Scotia Municipalities and the RCMP.

**52. Liaison with the Boards of Police Commissioners**

*We recommend that a regular annual meeting be held by the Police Commission with the chairs of all Nova Scotia Boards of Police Commissioners. The purpose would be to provide a forum for information exchange, program development, and possible collaboration among municipal police departments in various matters, from equipment to crime prevention.*

**Response:**

The Government accepted this recommendation.

**Action to Date:**

The Nova Scotia Department of Solicitor General, in conjunction with the Nova Scotia Police Commission, assisted in coordinating the first meeting of the Nova Scotia Association of Boards of Police Commissioners in the Spring of 1991.

The Association continues to meet, providing a forum for information exchange, program development and possible collaboration among municipal police departments. Several issues have been addressed to date including the establishment of a province-wide police information system.

**54. Independence of Police Forces**

*We recommend that the* Police Act *be amended to make it clear that it is unlawful for anyone other than a police officer of the same force to issue any order, direction or instruction to any member of a police force relative to his/her duties as a member of the force, except when communicating a decision of the force's lawful governing authority, and that a governing authority shall only issue such order, direction or instruction to the Chief or someone who is acting in his or her stead.*

**Response:**

The Government accepted the intent of this recommendation.

**Action to Date:**

A review of existing legislation was undertaken.

This review indicated that current provisions of the *Police Act* [Section 19 Municipal Board of Police Commissioners, subsection (11)] are adequate to address the requirement for non-interference by police-governing authorities in the day-to-day activities of police forces.

The following recommendations are grouped together because they both relate to police recruitment of visible minorities:

55. Minority Recruitment
56. Outreach Recruitment

**55. Minority Recruitment**

*We recommend that the recruitment of visible minority group members be actively encouraged by both police and governing authorities. Both the RCMP and municipal police departments in the province should establish specific recruitment targets which reflect the distribution of the visible minority groups in the population.*

**56. Outreach Recruitment**

*We recommend that particular attention be given to using outreach recruitment methods (for example, having visible minority officers involved in recruitment; building up contact with minority communities to facilitate recruitment). The guidelines prepared by the Greater Toronto Region Working Group on Policing in Multicultural, Multiracial Urban Groups on the recruitment and selection of visible minority police officers should be circulated to all relevant police organizations in the province.*

**Response:**

The Government endorsed these recommendations.

**Action to Date:**

The Nova Scotia Department of Solicitor General agrees that increased representation of visible minorities on police departments throughout the Province will serve to enhance the sensitivity of police officers to minority issues and build the confidence of visible minority groups in their law enforcement agencies.

The Solicitor General's Advisory Committee on Policing is currently examining proactive strategies for increasing the representation of visible minorities in law enforcement **(Recommendation 56)**.

On April 29, 1992 the Chiefs of Police Association of Nova Scotia passed a resolution to **"develop an employment equity strategy, the goal of which is to implement positive measures to enhance the representation of minority groups within police departments in Nova Scotia, and to eliminate barriers to recruitment and promotion."**

The Halifax Police Department, in cooperation with CEIC, Multiculturalism and Citizenship Canada and the Nova Scotia Department of Solicitor General, will conduct a recruit training program for ten visible minority candidates. Qualifications required for entry to the training program are identical to those for any individual desiring to become a police officer. Halifax Police Department is currently receiving applications for the recruit training program **(Recommendation 55)**.

The RCMP (Nova Scotia), has reviewed its recruitment program for aboriginal and visible minorities and find it to be meeting the identified need. The national policy centre at RCMP Headquarters (Ottawa), continues to monitor recruiting policies and practices with the view of eliminating systemic barriers that may exist and to ensure equal access by all segments of society. The Nova Scotia RCMP recruiting program continues to target visible minority, aboriginal and female applicants to meet the national recruiting targets of 6.3% visible minority employees by the year 2003, 2.1% aboriginal employees by the year 2008 and 20% female employees by the year 2008 **(Recommendation 55)**.

The following recommendations are grouped together because they deal with police liaison with visible minorities. The update to these recommendations is on page 46.

57. Minorities in Management Positions
58. Minority/Police Relations
59. Access of Minorities to Police

**57. Minorities in Management Positions**

*We recommend that action be taken to get members of visible minorities into police management positions.*

**Response:**

The Government endorsed this recommendation.

**58. Minority/Police Relations**

*We recommend that the Nova Scotia Police Commission take a strong leadership role in police/visible minority relations by providing useful materials to departments*

*(comparable in quality to those now made available to its officers by the RCMP), arranging imaginative in-service training in conjunction with the Atlantic Police Academy or similar bodies, and assisting departments in the setting up of race relations liaison officers or committees.*

**Response:**

The Government endorsed this recommendation.

**59. Access of Minorities to Police**

*We recommend that, together with the Nova Scotia Police Commission, municipal police departments and local boards of police commissioners develop imaginative outreach programs and liaison roles in order to provide visible minorities with greater access to and more positive interaction with the police.*

**Response:**

The Government accepted this recommendation.

**Action to Date:**

The Solicitor General has established an Advisory Committee on Policing with representation from the Department of Solicitor General, the Nova Scotia Chiefs of Police Association, the Atlantic Institute of Criminology and two representatives of the visible minority community. The Committee will advise the Minister on such issues as recruitment, hiring and promotion policy (**Recommendation 57**); training and standardization; and mechanisms for improving communication between the police and visible minorities (**Recommendation 58**).

The Solicitor General has requested that each municipal police department establish a Police Liaison Committee, reporting to the Chief of Police, composed of members representative of the racial/ethnic mix of the communities served by the respective police departments (**Recommendation 59**). These committees will serve as a forum for community input to policing policy, and as a vehicle for resolving police/community concerns. The Department of Solicitor General will provide assistance, if requested by the police departments, in establishing these committees.

Municipal boards of police commissioners are responsible for establishing policing policy at the local level and have a pivotal role to play in ensuring that police are sensitive to the multi-cultural, multi-racial nature of their communities. Municipal councils are responsible for appointing from two to six representatives, and the Solicitor General, one representative. Where vacancies arise, the Solicitor General will consider visible minorities for such appointments. The Minister has communicated with municipal boards of police commissioners, encouraging them to consider the appointment of visible minority representatives (**Recommendations 57 and 59**).

The RCMP, "H" Division, has a provincial Black Advisory Committee and a provincial Aboriginal Advisory Committee. The Commanding Officer, "H" Division, is a member of both committees. Each detachment in Nova Scotia has a community consultative group on which the Detachment Commander participates **(Recommendation 59)**.

## 60. Discrimination in Police Departments

*We recommend that municipal police departments adopt as an objective the eradication in police departments of racial slurs and stereotyping, and in pursuit of this objective promulgate official policies and guidelines on stereotyping similar to those currently employed by the RCMP (RCMP Administration Manual 111.9) or the Metropolitan Toronto Police Force (standing order 24).*

**Response:**

The Government accepted this recommendation.

**Action to Date:**

A draft document containing proposed policing standards (including those pertaining to the eradication of racial slurs and stereotyping), has been widely distributed by the Nova Scotia Law Enforcement Standards Project to the policing community, boards of police commissioners and police unions. The second phase of the project is now underway. It will see the development of specific policies and procedures to reflect those standards.

The Solicitor General has requested that the Advisory Committee on Policing examine the proposed standards to ensure they respond to members of the visible minority community in a fair, just and culturally sensitive manner. The Committee has been directed to specifically address the policies relating to the eradication of racial slurs and stereotyping.

The following recommendations are grouped together because they deal with minority sensitization training. The update to these recommendations is on page 48.

61. Training
62. Sensitivity to Minority Concerns
63. Atlantic Police Academy Programs

## 61. Training

*We recommend that special attention be given to more intensive training for cadets whose first assignment will be in areas of high visible minority representation. In addition, detachments and municipal police departments located in areas of high visible minority concentration should allocate proportionally more of their resources to multicultural and race relations training. The Police Commission should monitor detachment and municipal police department performance in this area.*

**62. Sensitivity to Minority Concerns**

*We recommend that education and sensitivity training with respect to visible minorities be more pronounced in the cadet training curriculum and should be a component of regular in-service training.*

**63. Atlantic Police Academy Programs**

*We recommend that the Atlantic Police Academy be encouraged to continue to develop in-service programs and imaginative experimental initiatives for police/visible minority interaction.*

**Response:**

The Government accepted these recommendations.

**Action to Date:**

Cabinet has accepted the recommendations of the Solicitor General's Task Force on Municipal Police Training. The report recommends that recruits and serving officers participate in training courses which enhance sensitivity to visible minorities. The Atlantic Police Academy, through funding by the Secretary of State, developed a cross-cultural training program for recruits and serving officers (**Recommendation 63**).

In collaboration with representatives of the Mi'kmaq and visible minority communities, the Department of Solicitor General and the Nova Scotia Police Commission developed a three-day minority sensitization course. This was done in partnership with the Atlantic Police Academy, representatives of municipal police departments and the RCMP. All senior management of the Department of Solicitor General and selected senior officials from the RCMP and Metro police officers have participated in this course. A schedule has been established for the remainder of 1992 to train police officers (**Recommendation 62**).

The Department recognizes that participation in a three-day course cannot be the only way to ensure that justice personnel are sensitive to the concerns of visible minorities. Ongoing training is required and elements of cross-cultural sensitization must be present in all training sessions, no matter what the subject. The task of ensuring that appropriate training strategies are developed has been included in the mandate of the Solicitor General's Advisory Committee on Policing. This will include the development of specific strategies for officers working in areas of high visible minority concentration (**Recommendation 61**).

The RCMP "H" Division, has started a five-year plan to train all operational members in cross-cultural issues. 102 employees have been trained within the last year. In addition, the RCMP Headquarters Training Directorate is presently examining the mechanics of inserting a cross-cultural training module in all training courses offered by the RCMP.

The following recommendations are grouped together because they deal with uniform standards for policing. The update begins on page 52.

64. Guidelines on other than Full Time Personnel
65. Promotion Guidelines
66. Selection of Police Chief
69. Assessment of Police Officers
70. Investigative Skills
71. Guidelines for Investigations
72. Evaluation of Investigative Capabilities in Police Departments
73. Directive on Investigation of Murder/Attempted Murder
75. Recording Police Interviews
76. Internal Review of Investigations
78. Minimum Standards for Policing
79. Departmental Plans
80. Management Systems
81. Code of Ethics

**64. Guidelines on other than Full-Time Personnel**

*We recommend that guidelines be developed by the Police Commission with respect to the use by municipal police departments of part time, volunteer and auxiliary personnel.*

**Response:**

The Government accepted this recommendation.

**65. Promotion Guidelines**

*We recommend that routine promotion guidelines be established in all municipal police departments. In all but the largest municipal police departments the involvement of the Police Commission and/or outside consultants should be required.*

**Response:**

The Government accepted this recommendation.

**66. Selection of Chief of Police**

*We recommend that in all but the largest municipal police departments the involvement of the Police Commission and/or outside consultants be required in the selection of the chief of police.*

**Response:**

The Government accepted the intent of this recommendation.

**69. Assessment of Police Officers**

*We recommend that periodic assessment of municipal police department officers be carried out as in Nova Scotia's recently announced "force continuum program" which deals with the use of firearms and mace. Common standards should be developed for certification in these areas and consideration should be given to the inclusion of physical fitness and basic response/preliminary investigation imperatives.*

**Response:**

The Government accepted this recommendation.

**70. Investigative Skills**

*We recommend that all constables be required to have basic investigative skills such as would be required to secure the crime scene and carry out proper preliminary recording and investigation.*

**Response:**

The Government accepted this recommendation.

**71. Guidelines for Investigations**

*We recommend that municipal police departments cooperate with the Police Commission to produce a uniform set of guidelines for investigative work.*

**Response:**

The Government accepted this recommendation.

**72. Evaluation of Investigative Capabilities in Police Departments**

*We recommend that the Police Commission undertake a systematic evaluation of the investigative capacities available in all municipal police departments in the province. This evaluation should be coordinated with periodic reviews of the municipal police departments.*

**Response:**

The Government accepted this recommendation.

**73. Directive on Investigation of Murder/Attempted Murder**

*We recommend that the current standing directive on municipal police department responsibilities for the investigation of murder and attempted murder be regarded as a flexible directive which may change to reflect alterations in municipal police department investigative capacities. This may involve broadening the scope of exemptions, or it may*

*lead to the inclusion of other serious crimes in the list of offences which some municipal police departments may not be able to handle.*

**Response:**

The Government accepted this recommendation.

**75. Recording Police Interviews**

*We recommend that audio-visual recording of police interviews of chief suspects and witnesses in serious crimes such as murder, and of juveniles and other interviewees who may be easily influenced, be encouraged.*

**Response:**

The Government accepted this recommendation.

**76. Internal Review of Investigations**

*We recommend that it be standard practice in all police departments for superiors to review, with investigators, the progress of investigations of all serious offences.*

**Response:**

The Government accepted this recommendation.

**78. Minimum standards for Policing**

*We recommend that all municipal police departments be able to deliver police services according to a set of minimum standards for policing in Nova Scotia. This set of standards should be developed by the Police Commission with appropriate input from both provincial (Solicitor General) and municipal (local police commissions) governing authorities. Recognizing that the primary responsibility for delivery of police services is with the municipalities and that it may be beyond the financial capability of some to upgrade their municipal police department according to these minimum standards, the Province must ensure that the municipal police departments have the resources to meet the prescribed standards.*

**Response:**

The Government accepted the intent of this recommendation.

**79. Departmental Plans**

*We recommend that municipal police departments establish departmental plans which include a clear definition of departmental goals and priorities, and appraisal systems for evaluating job performances.*

**Response:**

The Government accepts this recommendation.

**80. Managements Systems**

*We recommend that priority be given to improving police management systems among the municipal police departments, focusing on greater communication, feedback and accountability among departmental members.*

**Response:**

The Government accepted this recommendation.

**81. Code of Ethics**

*We recommend that municipal police departments be encouraged to develop a code of ethics as positive guidelines for behaviour. For purposes of continuity and consistency and for minimum standardization, such codes should be developed in consultation with the Atlantic Police Academy and the Police Commission.*

**Response:**

The Government accepted this recommendation.

**Action to Date:**

In order to develop uniform standards for policing, the Nova Scotia Department of Solicitor General initiated the Law Enforcement Standards Project in 1990, with the appointment of a full-time co-ordinator. The project is directed by a Steering Committee, composed of representatives from the Department of Solicitor General, the Nova Scotia Police Commission and the Nova Scotia Chiefs of Police Association. The draft Standards document has been widely distributed to the policing community, boards of police commissioners and police unions. The Standards were distributed to the Tripartite Sub-committee on Policing **(Recommendation 22)** and have been referred to the Solicitor General's Advisory Committee on Policing for review. The second phase of the project - the drafting of detailed policies and procedures for police agencies - started in the Fall of 1991.

Guidelines for the selection, training, assignment, uniforms and the use of equipment for police auxiliary personnel are included in the provincial policing standards. Compliance with the standards will be monitored by the Manager, Audit and Support Services, Policing Services Division (position established April 1992) **(Recommendation 64)**.

Prior to the establishment of the Policing Services Division, the Police Commission participated in promotional routines. This function has been assumed by the Manager of Training (Policing Services Division). Current standards for promotion

are under review by the Solicitor General's Advisory Committee on Policing **(Recommendation 65)**.

A standard has been developed for the selection process for all positions within a police department. This is provided in the manual developed by the Law Enforcement Standards Project. Specific policies for the selection of the Chief of Police have not yet been developed **(Recommendation 66)**.

The *Police Act* requires that officers re-qualify in the competent use of firearms every two years, and in the use of Mace every three years. The provincial standard requires that only officers demonstrating proficiency in the use of authorized firearms be allowed to carry and use such weapons. Regular assessments are carried out by the Manager of Training (Policing Services Division), to ensure adherence to these standards **(Recommendation 69)**.

Basic investigative skills are included in the cadet course curriculum of the Atlantic Police Academy. All recruits hired by police departments are required to meet this minimum standard **(Recommendation 70)**.

Standards for police investigations have been completed by the Law Enforcement Standards Project. Detailed policies and procedures respecting the conduct of these investigations are currently being developed by the recently appointed Executive Director, Policing Services **(Recommendation 71 and 76)**.

A uniform standard regarding audits has been completed by the Standards Project; and requires that the Policing Services Division **"shall inspect and report upon the quality and standard of police service delivery of each municipal police department at least every three years."** **(Recommendation 72)**.

The current standing directive on municipal police department responsibilities for the investigation of murder and attempted murder remains in effect **(Recommendation 73)**.

Audio-visual recording of police interviews of chief suspects and witnesses in serious crimes is currently being practiced by several police departments, where equipment is available and expertise exists **(Recommendation 75)**.

A set of minimum standards for policing has been developed by the Law Enforcement Standards Project **(Recommendation 78)**. Policing standards require the development of a multi-year plan, which includes goals and operational objectives for the department; anticipated workload and population trends; anticipated personnel levels; and anticipated capital improvements and equipment needs **(Recommendations 79, 80)**. The policing standard also requires that a written directive be issued, such directive to include compliance with department directives; unbecoming conduct; use of alcohol and drugs; acceptance of gratuities, bribes or rewards; abuse of authority; use of force; and proper care and maintenance of equipment **(Recommendation 81)**.

**67. Supervisory & Management Training**

*We recommend that more training be provided for those promoted in supervisory and management positions in the municipal police departments. Training in courses on supervision and executive development should accompany such promotion.*

**Response:**

The Government accepted this recommendation.

**Action to Date:**

The Solicitor General's Task Force on Municipal Police Training developed a minimum compulsory training program which specified appropriate training courses for each rank within municipal police forces. Access to training for supervisory and management personnel has been limited by lack of resources.

**68. Monitoring of Training**

*We recommend that the Solicitor General's Task Force on Municipal Police Training, as well as data collected as part of the Police Study for this Report, be used to establish an ongoing system for monitoring levels of training in the province. The system should be maintained by the Police Commission or equivalent body and should incorporate clear definitions of the types of training appropriate for the needs of the particular members, departments and detachments.*

**Response:**

The Government accepted this recommendation.

**Action to Date:**

The Department of Solicitor General is currently developing a computer system to monitor the participation of police officers in training programs. The system will have the capacity to compare training completion with training requirements, and will generate lists of officers requiring specific training. This management information system will promote better use of training resources.

**74. Interviewing juveniles and the mentally unstable**

*We recommend that in cases where suspects and/or witnesses are juveniles or mentally unstable, investigating officers make special efforts to ensure they are treated fairly. Supportive persons from the witness/suspect viewpoint should be present during interviews.*

**Response:**

The Government accepted this recommendation.

**Action to Date:**

In May 1991, a Protocol for the Investigation and Prosecution of Cases involving Victims/Witnesses with Special Communications Needs was introduced and issued to all police agencies in Nova Scotia. This protocol provides guidance to Crown Attorneys with respect to cases involving persons with special communication needs.

This policy is designed to guide criminal justice officials in the comprehensive investigation and prosecution of cases involving persons with special communications needs. Persons with special communications needs are those who, because of age, literacy level, mental or physical disability are unable, without assistance, to fully assess the criminal justice system or understand or be understood by justice officials.

The Nova Scotia "Special Needs" Protocol is the first such document in Canada. It has been widely distributed and is considered a model for jurisdictions throughout North America.

**77. Delivery of Policing Services**

*We recommend that a joint task force be established by the Solicitor General and the Minister of Municipal Affairs, with representation from the other relevant bodies, to examine the organization and delivery of policing services within the province, and in particular, to consider and review the desirability and feasibility of some regionalization of existing municipal policing services in the province, and to make recommendations to the Government on these matters. Such a review should also examine other less comprehensive collaborative arrangements which might beneficially be established or further developed between existing municipal police forces and the RCMP to improve the quality and efficacy of the delivery of policing services in the province.*

**Response:**

The Government accepted this recommendation.

**Action to Date:**

Recommendations made by the Task Force on Local Government regarding the delivery of policing services are currently being reviewed. The Department will be participating on an interdepartmental committee to study these recommendations.

**82. Reinvestigations**

*We recommend that guidelines be developed by the Solicitor General and Attorney General Departments detailing procedures to be followed where it is necessary for there to be a reinvestigation of the work of a police force. Any such reinvestigation of the work of a municipal police department should be conducted by the RCMP, with out-of-province assistance if required. All reinvestigations should be thoroughly reviewed by the Department of Attorney General.*

**Response:**

The Government accepted this recommendation.

**Action to Date:**

A committee, composed of representatives from the Departments of Solicitor General, Attorney General, Nova Scotia Chiefs of Police Association and the RCMP was struck to examine this issue.

The Attorney General/Solicitor General released a Directive for Additional Investigation and Reinvestigation in May 1992. The directive specifies procedures to be followed in cases of re-investigation (or additional investigation), in cases where a charge has been laid and where no charge has been laid. The directive requires that re-investigation of the work of a municipal police department should be conducted by the RCMP.